

**United States Department of Labor
Employees' Compensation Appeals Board**

R.S., Appellant

and

**DEPARTMENT OF THE AIR FORCE,
CANNON AIR FORCE BASE, NM, Employer**

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**Docket No. 07-2413
Issued: March 4, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 27, 2007 appellant filed a timely appeal from January 4 and June 22, 2007 merit decisions of the Office of Workers' Compensation Programs terminating his compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's wage-loss compensation effective January 21, 2007 on the grounds that he had no further disability due to his August 1, 2006 employment injury; and (2) whether he has established that he had employment-related disability after January 21, 2007.

FACTUAL HISTORY

On August 18, 2006 appellant, then a 38-year-old plumbing worker, filed a claim for an injury occurring on August 1, 2006 when he twisted his right ankle while getting out of a truck.

He stopped work on August 7, 2006 and did not return. The Office accepted the claim for a right ankle sprain.

Dr. Joel W. Sievers, who specializes in family practice, treated appellant for his right ankle sprain. He found that appellant could work with restrictions beginning in September 2006; however, the employing establishment did not have light-duty work available. The Office paid appellant compensation beginning September 21, 2006. The employing establishment terminated him from employment effective October 27, 2006 based on his inability to perform his job duties.

In a progress report dated November 3, 2006, Dr. Sievers found mild swelling and tenderness of the lateral and anterolateral right ankle with no instability or laxity. He diagnosed an improving right ankle sprain and opined that appellant could resume regular work with no restrictions. Dr. Sievers recommended continued rehabilitation and a follow-up appointment.

On November 27, 2006 the Office notified appellant of its proposed termination of his wage-loss compensation on the grounds that he had no further employment-related disability. The Office provided him 30 days to respond to the proposed termination. Appellant submitted physical therapy reports.

In a decision dated January 4, 2007, the Office terminated his compensation effective January 21, 2007 based on Dr. Sievers finding that he had no further disability due to his August 1, 2006 work injury.

In a January 29, 2007 progress report, Dr. Sievers noted that appellant aggravated his right ankle sprain when he slipped on ice. He found mild lateral swelling, mild to moderate tenderness of the posterolateral and anterior joint and trace laxity of the anterior drawer. Dr. Sievers diagnosed a right ankle sprain and a suspected associated chondral injury. He recommended a magnetic resonance imaging (MRI) scan study.¹

In a report dated February 19, 2007, Dr. Floyd Pacheco, Jr., a podiatrist, evaluated appellant for Dr. Sievers. He noted that appellant sustained an injury to his right ankle on August 30, 2006. Dr. Pacheco found edema in the lateral aspect of the right ankle with laxity of the anterior drawer on the right versus the left. He interpreted an MRI scan study as showing an anterior talofibular ligament tear and possible attenuation of the calcaneofibular ligament. Dr. Pacheco diagnosed right lateral ankle instability and recommended surgery. In an accompanying form report dated February 19, 2007, he opined that appellant was unable to work due to right ankle instability.

On March 2, 2007 Dr. Pacheco performed a left ankle arthrotomy and a right ankle repair of the anterior talofibular and calcaneofibular ligament. In March 8, 2007 form reports, he asserted that appellant was unable to work due to right and left ankle instability. In a progress

¹ An MRI scan study of the right ankle, obtained on February 5, 2007, revealed mild soft tissue edema of the posterior talofibular and intermalleolar ligament, bone marrow edema in the posterior talus and low lying of the peroneus brevis musculotendinous junction.

report of the same date, Dr. Pacheco opined that appellant was doing well after an ankle stabilization and arthrotomy.

On May 1, 2007 appellant requested reconsideration. He submitted a March 29, 2007 progress report from Dr. Pacheco, who noted that appellant was status post ankle stabilization and arthrotomy and found that he was disabled from employment. In a May 29, 2007 form report, Dr. Pacheco diagnosed right ankle instability and opined that he was unable to work.

By decision dated June 22, 2007, the Office denied modification of its January 4, 2007 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.² The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for right ankle strain. He stopped work on August 7, 2006 and did not return.⁴ The Office paid appellant compensation for total disability beginning September 21, 2006.

In a report dated November 3, 2006, Dr. Sievers diagnosed an improving right ankle sprain. He found good stability, no laxity, mild lateral and anteriolateral swelling and mild tenderness. Dr. Sievers released appellant to resume his usual employment with no physical limitations. As appellant's attending physician, he had a thorough knowledge of his condition. Thus, Dr. Sievers' opinion constitutes the weight of the medical evidence. The Office, consequently, properly relied upon his opinion in terminating appellant's compensation effective January 21, 2007.⁵

² *Gloria J. Godfrey*, 52 ECAB 486 (2001).

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁴ The employing establishment terminated appellant from employment effective October 27, 2006 as he could no longer perform his employment duties.

⁵ Appellant submitted physical therapy reports. A physical therapist is not a "physician" within the meaning of section 8101(2) of the Act and cannot render a medical opinion. *Vickey C. Randall*, 51 ECAB 357 (2000).

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had continuing disability after that date related to his accepted injury.⁶ To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.⁷ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationalize explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

ANALYSIS -- ISSUE 2

On January 29, 2007 Dr. Sievers noted that appellant sustained a possible aggravation of his right ankle sprain when he slipped on ice. On physical examination, he found mild lateral swelling, mild to moderate tenderness of the posterolateral and anterior joint and trace laxity of the anterior drawer. Dr. Sievers diagnosed a right ankle sprain and a suspected associated chondral injury. He did not, however, address the relevant issue of whether appellant was disabled from employment and thus his opinion is of diminished probative value. Further, Dr. Sievers did not provide an opinion on the causal relationship between the accepted employment injury and the diagnosed conditions of right ankle sprain and a chondral injury. Such an opinion on causal relationship is especially necessary given the physician's finding that appellant may have sustained an intervening injury when he recently slipped on ice.

In a report dated February 19, 2007, Dr. Pacheco discussed appellant's history of an August 30, 2006 right ankle injury. He found edema in the lateral aspect of the right ankle with laxity of the anterior drawer on the right versus the left and noted that an MRI scan study revealed an anterior talofibular ligament tear and possible attenuation of the calcaneofibular ligament. Dr. Pacheco diagnosed right lateral ankle instability and recommended surgery. In a form report of the same date, he determined that appellant was unable to work due to right ankle

⁶ *Manual Gill*, 52 ECAB 282 (2001).

⁷ *Id.*

⁸ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *Ernest St. Pierre*, 51 ECAB 623 (2000).

instability. Dr. Pacheco did not, however, specifically address the cause of the diagnosed conditions or appellant's disability from employment. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹¹

On March 2, 2007 Dr. Pacheco performed a left ankle arthrotomy and a right ankle repair of the anterior talofibular and calcaneofibular ligament. In March 8, 2007 form reports, he asserted that appellant was unable to work due to right and left ankle instability. In a progress report of the same date, Dr. Pacheco opined that appellant was doing well after an ankle stabilization and arthrotomy. On March 29, 2007 he diagnosed status post ankle stabilization and arthrotomy and found that he was disabled from employment. In a May 29, 2007 form report, Dr. Pacheco diagnosed right ankle instability and opined that he was unable to work. Again, however, he did not address causation and thus his reports are of little probative value on the issue of causal relationship.¹²

Appellant has not submitted rationalized medical evidence establishing that he was disabled from work after January 21, 2007 due to his employment injury. Thus, he has not met his burden of proof to show that he had any continuing employment-related disability subsequent to the termination of his compensation effective January 21, 2007.

CONCLUSION

The Board finds that the Office properly terminated appellant's wage-loss compensation effective January 21, 2007 on the grounds that he had no further disability due to his August 1, 2006 employment injury. The Board further finds that appellant did not establish that he had employment-related disability after January 21, 2007.

¹¹ *Conrad Hightower*, 54 ECAB 796 (2003).

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 22 and January 4, 2007 are affirmed.

Issued: March 4, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board